

**Tab 6**

## FACILITY SITE LEASE AGREEMENT

This Lease is executed on June 30, 1995, between APLC, INC., a New Jersey corporation ("APLC") and MANCHESTER RENEWABLE POWER CORPORATION, a New Jersey corporation ("MRPC").

### WITNESSETH:

WHEREAS, Atlantic Pier Company, Inc. ("APC") is the owner of certain real property located in the Township of Manchester, County of Ocean, State of New Jersey, more particularly described in Schedule "A" attached hereto which property has been and is currently utilized as a solid waste landfill facility and in accordance with NJDEP Solid Waste Facility permit; and

WHEREAS, APC has leased the above real property to Ocean County Landfill Corporation ("OCLC") pursuant to a lease dated January, 1985 as amended from time to time; and

WHEREAS, OCLC has developed and constructed on said real property a methane gas collection system; and

WHEREAS, OCLC has agreed to release and reconvey to APC a portion of real property subject to the lease dated January, 1985; and

WHEREAS, APLC has leased from APC that certain portion of said real property released by OCLC; and

WHEREAS, MRPC has entered or will enter into a contract ("Power Purchase Contract") with a utility or other entity to purchase the electrical output of the small power production facility; and

WHEREAS, in furtherance of its obligations under the Power Purchase Contract, MRPC desires to lease from APLC the Leased Premises;

NOW THEREFORE, in consideration of the promises and mutual benefits and covenants herein contained, and other good and valuable consideration, the parties hereby agree as follows:

1. Definitions. For the purposes of this Agreement, the following designations shall have the meaning as defined in this Section:

(a) "Building" means that structure to be constructed on the Leased Premises to house the Facility.

- (b) "Methane Collection System" means the system of subsurface piping and other appurtenant facilities existing on and under the real property subject to the 1985 Lease Agreement, as defined herein, and utilized for the purpose of collecting the Landfill Gas.
- (c) "Commercial Operation" means the date on which MRPC commences the production of electrical energy from the Facility, as defined herein, for sale pursuant to the terms and conditions of the Power Purchase Contract as defined herein.
- (d) "Gas Flare System" means that gas flare and appurtenant equipment and piping more specifically described in the approved engineering plans for the OCLC facility.
- (e) "Facility" means the landfill gas small power production facility to be constructed, operated and maintained on the Leased Premises by MRPC.
- (f) "Landfill Gas" means any gaseous mixture of hydro-carbons and non-combustible gases provided from the decomposition of biomass deposited in and under the real property subject to the 1985 Lease Agreement.
- (g) "Leased Premises" shall be that real property located within the Township of Manchester, County of Ocean and State of New Jersey, more particularly described in Exhibit "A" attached hereto and made a part hereof, upon which the Facility and Building will be constructed, operated and maintained.
- (h) "1985 Lease Agreement" is that lease, dated January 1985, as amended from time to time, wherein Atlantic Pier Company, Inc. ("APC") leases to OCLC certain real property, a portion of which includes the Leased Premises as defined herein.
- (i) "Power Purchase Contract" means that agreement entered into or to be entered into by MRPC wherein MRPC shall sell the electrical output of the Facility on the Leased Premises.

2. Lease of Leased Premises. APLC hereby leases to MRPC, and MRPC hereby rents from APLC, subject to the terms and conditions herein contained, those certain premises (the "Leased Premises") described in Exhibit "A" attached hereto. During the term of this Lease, MRPC shall also have a non-exclusive licenses to (a) allow ingress and egress, across OCLC's other property surrounding the Leased Premises in order to obtain access to the Leased Premises and (b) to install and maintain utility poles to carry electricity generated at the Facility to and from the Leased Premises. These non-exclusive licenses over OCLC's other property is limited strictly to those portions of said property as shown on the maps attached hereto as Exhibits B and C.

These non-exclusive licenses shall terminate upon the expiration or earlier termination of this Lease and shall not be recorded as an interest in the property. The parties recognize that this Lease does not convey to MRPC any mineral rights, oil rights, natural gas rights or rights to any landfill gas located on the property which comprises or surrounds the Leased Premises.

3. Term. This Agreement shall be effective as of the date hereof. In the event that any governmental or regulatory approval or permit deemed necessary or advisable to consummate the transactions contemplated hereunder are not received, either party may terminate this Agreement. Such right of termination shall only be exercisable upon the failure to receive a governmental or regulatory approval or permit deemed necessary or advisable to consummate the transactions contemplated hereunder. This Agreement may also be terminated upon the failure of MRPC to enter into the Power Purchase Contract acceptable to Landfill Energy Systems, Inc. and the approval of said contract by the N.J.B.R.C. The rights of MRPC and APLC pursuant to this section 3 shall expire upon the earlier to occur of (i) Commercial Operation of the Facility pursuant to the Power Purchase Contract, or (ii) December 31, 1995. The term of this Lease shall continue so long as MRPC is obligated to sell electrical energy produced at the Leased Premises pursuant to the Power Purchase Contract or any replacement thereof

4. Rent. During the term of this Lease, MRPC shall pay rent to APLC in the amount of [REDACTED] per year payable in quarterly installments. The first rental payment hereunder shall be paid by MRPC when the Lease term commences as provided in Paragraph 3 above.

5. Taxes. APLC shall pay all real and personal property taxes levied on the Leased Premises and the Facility. MRPC shall have no liability whatsoever with regard to same.

6. Insurance. MRPC shall procure and keep in effect, during the term of this Lease, comprehensive public liability and property damage insurance in a combined single amount of not less than the greater of: (a) one million dollars, or (b) the amount, if any, required under the Power Purchase Contract, for death or injury to any person(s) or for property damage as a result of any one occurrence which may arise out of or in connection with MRPC's occupancy of the Leased Premises. In the event the party to whom electrical energy is sold by MRPC requires higher limits, then in that event, MRPC shall procure and pay for same. Such insurance policy shall provide for ten days' written notice to APLC of any material change of coverage. MRPC shall name APLC as an additional party to be covered under all such insurance coverages required under this Agreement. Upon the request of APLC, MRPC shall deliver certificates evidencing the existence and amounts of such insurance policies to APLC. This insurance is to be carried by one or more insurance companies authorized to transact business in New Jersey.

7. Utilities. All applications and connections for necessary utility services on the Leased Premises shall be made in the name of MRPC, and MRPC shall be liable for utility charges as they become due, including those for sewer, water, gas, electricity, and telephone services.

8. Condition of Leased Premises. APLC hereby warrants to MRPC that the Leased Premises will be suitable and adequate, within reason, to MRPC's requirements for installation and operation of its Facility. APLC shall promptly notify MRPC, in writing, when APLC has completed the construction of the building and shall fully cooperate with MRPC's reasonable requests to inspect same.

MRPC shall be obligated to install and maintain any and all landscaping which is located or required on the Leased Premises. APLC shall be responsible for any landscaping which is located on property surrounding the Leased Premises.

9. Construction of the Building. APLC agrees to construct the Building to house the Facility on the Property. All costs connected with the construction and site work including all labor and materials are to be born by APLC. The construction shall be conducted in accordance with the plans and specifications prepared by MRPC and approved by APLC. APLC shall be the owner of the Building and shall retain possession of the Building upon lease termination.

10. Construction of the Facility. MRPC, at its cost and expense, shall design, develop and construct the Facility so that it conforms to and meets the specifications of the Agreement by which electrical energy will be produced and sold by MRPC.

11. Utility Interconnection. MRPC at its cost and expense, shall pay [REDACTED] of the costs of the utility interconnection between the Facility and the party purchasing electrical energy from MRPC. APLC shall pay up to [REDACTED] of the costs and expenses [REDACTED] and MRPC shall use its best efforts to minimize same. In the event the cost and expense to develop the utility interconnection exceeds [REDACTED] APLC shall be under no obligation to pay any such costs (i) incurred following the Commercial Operation date, or (ii) incurred through the negligence or willful misconduct of MRPC.

12. Maintenance, Repair and Improvements. MRPC shall keep and maintain the Leased Premises, including exterior walls, roof, heating, plumbing and all other utility systems and improvements, in the good condition and repair reasonable wear and tear excepted. MRPC may not make any alterations or improvements to the Leased Premises except after obtaining written approval from APLC, which shall not be unreasonably withheld.

13. Notice to APLC. If the leased Leased Premises, or any structures or improvements on the Leased Leased Premises, should be damaged or destroyed by fire, flood, or other casualty, MRPC shall give immediate written notice of the damage and, as far as known to MRPC, the cause of the damage.

14. Compliance with Law. MRPC shall, at its sole expense, comply with all necessary governmental authorizations, permits and licenses required to conduct its operations. In addition,

MRPC shall comply with all applicable federal, state and local laws, rules, regulations and orders in its use of the Leased Premises pursuant to this Lease.

15. Use of Leased Premises. MRPC shall have the right to use the Leased Premises, subject to any applicable regulatory requirements, compliance with which shall be the sole responsibility of MRPC, to the extent reasonably necessary or convenient for MRPC's operations. MRPC shall use the Leased Premises for construction and operation of a landfill gas small power production facility which shall combust such gas to generate electric energy for sale. MRPC shall not use the Leased Premises for any other purpose without the express consent of APLC.

16. Permits. MRPC shall obtain all required federal, state and local permits and approvals, including but not limited to any environmental permits, which are now or which in the future become necessary to construct, operate and maintain the Facility pursuant to the agreement by which MRPC sells the electrical energy it produces.

- A. Except as hereinafter provided in Paragraph 16B, APLC shall reimburse MRPC for the reasonable out of pocket costs in obtaining all required federal, state and local permits and approvals necessary to construct and begin operation of the Facility pursuant to the agreement by which MRPC sells the electrical energy it produces.
- B. APLC shall not reimburse MRPC for (i) the costs of obtaining any permits or approvals which are not necessary for the construction and initial operation of the Facility and (ii) the cost of any permits or approval from the Federal Energy Regulatory Commission.
- C. APLC shall cooperate, within reason, in all efforts of MRPC to obtain all necessary permits and approvals.
- D. MRPC agrees that it shall contract with and employ the services of WEHRAN ENVIROTECH in its efforts to obtain all necessary environmental permits and approvals.
- E. All permitting and approval activity of MRPC, including but not limited to, filing permits and agreements with regulatory agencies, shall be coordinated with and be subject to the prior approval of APLC, which approval shall not be unreasonably withheld.

Upon termination of this Agreement, MRPC shall cause any and all permits obtained with regard to this transaction to be transferred to APLC or its designee.

17. Indemnification. APLC shall defend, indemnify and hold MRPC, its affiliates, officers, shareholders and employees, harmless from and against any and all claims, demands,



actions, proceedings, liabilities or losses, of whatsoever nature (including reasonable attorney's fees) for injury or death to person(s) or for damage or loss to property arising out of or caused by APLC's operations or activities in connection with the Leased Premises, or any contiguous or non-adjacent property under APLC's control, unless such injury, damage or loss is caused by the wrongful acts or negligence of MRPC. MRPC shall defend, indemnify and hold APLC, its affiliates, officers, shareholders and employees, harmless from and against any and all claims, demands, actions, proceedings, liabilities or losses, of whatsoever nature (including reasonable attorney's fees) for injury or death to person(s) or for damage or loss to property arising out of or caused by MRPC's use of, MRPC's operations at or MRPC's activities in connection with the Leased Premises or any contiguous or non-adjacent property unless such injury, damage or loss is caused by the wrongful acts or negligence of APLC.

18. Assignment and Subletting. Neither party hereto may sell, encumber, assign or transfer its rights under this Lease or any interest it may have herein, without the express consent of the other party, and the terms, conditions and provisions of this Agreement shall extend and apply to and shall be binding upon the respective heirs, administrators, executors, successors, assigns, and delegates of each party. Upon any such sale, assignment or transfer of a party's interest herein, the transferring party shall be relieved of any further obligation hereunder as to the interest sold, assigned or transferred. Such consent shall not be unreasonably withheld.

No change or division in ownership of the Premises or assignment of the amounts due hereunder shall operate to enlarge the obligations or diminish the rights of MRPC, and no change, division or assignment of such right shall be binding upon MRPC until 30 days after MRPC has been furnished with the original or a certified copy of the recorded instrument evidencing the same.

19. Removal Restoration and Right of First Refusal. Subject to (a) APLC's right of first refusal described below, (b) APLC's rights and remedies upon breach as described in Section 21 below and (c) APLC's or its affiliates rights under any other agreement with MRPC, MRPC shall have the right and obligation, within six months after the expiration or termination of this Agreement, to remove, at its sole cost and expense, the above-ground and below-ground property, fixtures and improvements which MRPC has placed on or adjacent to the Leased Premises. Upon termination of this Agreement, MRPC shall, at its expense, assure that the Leased Premises are returned to the same condition in which they were tendered by APLC and that the condition of the adjoining property owned by APLC has not been adversely affected by MRPC's operations at the Leased Premises. MRPC hereby grants to APLC a right of first refusal to purchase the above-mentioned property, fixtures and improvements and agrees that if a bona-fide offer to purchase from a third party is accepted by MRPC (subject to this right of refusal) then MRPC shall promptly give written notice of such offer and conditional acceptance to APLC, and APLC shall have 60 days from receipt of such notice to notify MRPC in writing of APLC's election either: (i) to purchase such property, fixtures and improvements on the same terms as set forth in such offer, or (ii) to decline such purchase. Failure of APLC to notify MRPC within such 60-day period shall be deemed an election by APLC to decline such purchase.

MRPC shall, upon expiration or termination of this Agreement, generally restore the surface of the Leased Premises to its condition at the commencement of this Agreement, to the extent reasonably possible.

20. Changes of Laws and Force Majeure. This Agreement shall not be terminated, in whole or in part, nor shall APLC or MRPC be held liable in damages, for failure to comply herewith, if compliance is prevented by, or the failure is the result of, any material, future change in any applicable law, order, ordinance, rule, regulation (including Acts of the New Jersey Legislature) or due to Force Majeure.

If MRPC's operations at the Leased Premises are, at any time prevented or affected by any of the causes referred to as a Force Majeure event, or by any change of law, the performance of its operations to the extent so prevented or affected shall be excused without liability hereunder, and this Agreement shall continue in full force and effect until MRPC is permitted to resume its operations and thereafter for the balance of the term of this Agreement. Provide, however, it shall be MRPC's obligation to promptly address any Force Majeure event or change of law, and diligently work to eliminate the Force Majeure event and to come into compliance with any change of law as soon as reasonably possible.

Force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of the party and which by the exercise of due diligence said party is unable, wholly or in part, to prevent or overcome. Any such occurrence shall be deemed a failure attributable to a "Force Majeure Event".

21. APLC's Remedies. If MRPC allows the rent to be in arrears more than thirty days after written notice of that delinquency, or if MRPC remains in default under any other condition of this Lease for a period of thirty days after written notice from APLC or if the Agreement under which MRPC sells electrical energy is terminated, APLC may at its option, without further notice to MRPC, terminate this Lease, reenter and take possession of the Leased Premises, including the Facility, and operate the Facility without being deemed guilty of any manner of trespass and with no obligation to compensate MRPC therefore.

After entry, APLC may relet the Leased Premises, or any part of the Leased Premises, for all or any part of the remainder of the lease term, to a party satisfactory to APLC and at such rental as APLC may with reasonable diligence be able to secure. Should APLC be unable to relet after reasonable efforts to do so, or should the rental be less than the rental MRPC was obligated to pay under this Lease, or any renewal of this Lease, plus the expense of reletting, then MRPC shall pay the amount of such deficiency to APLC.

22. Default by APLC. If APLC defaults in the performance of any term, covenant, or condition required to be performed by it under this Agreement, MRPC may elect to do either one of the following:



- A. After not less than thirty days' notice to APLC, MRPC may remedy such default by any necessary action and, in connection with such remedy, may pay expenses and employ counsel. All sums expended, or obligations incurred, by MRPC in connection with remedying APLC's default shall be paid by APLC to MRPC on demand and, on failure of such reimbursement, MRPC may, in addition to any other right or remedy that MRPC may have, deduct these costs and expenses from rent subsequently becoming due under this Lease.
- B. MRPC may terminate this Lease on giving at least thirty days' notice to APLC of such intention. In the event MRPC elects this option, the lease will be terminated on the date designated in MRPC's notice, unless APLC has cured the default prior to expiration of the 30-day period.

23. Cumulative Remedies; Waiver of Breach; Legal Remedy Inadequate. All rights and remedies of APLC and MRPC shall be cumulative, and none shall exclude any other right or remedy provided by law or by any other provision of this Lease. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises. A waiver by either APLC or MRPC of a breach of this Lease by the other party does not constitute a continuing waiver or a waiver of any subsequent breach of the lease. APLC and MRPC hereby acknowledge and agree that the breach by either of any duty or obligation arising under this Agreement will cause the other irreparable injury which is inadequately compensable in monetary damages, and, accordingly, either APLC or MRPC may seek specific performance or such other equitable relief as may be appropriate in addition to any remedy at law.

24. Quiet Enjoyment. APLC covenants that MRPC, on payment of all of the aforesaid installments of rent and upon performing all of the other covenants of MRPC herein required to be performed, shall and may peacefully and quietly have, hold and enjoy the Leased Premises for the term of this Lease. Provided, however, it is agreed and understood that APLC, at any time during regular business hours, shall have full and complete access to inspect the Leased Premises for any purpose.

25. Notices. Any notice to be given under this Agreement shall be made in writing and shall be deemed to have been properly given and received: (i) when delivered in person to the authorized representative of the party to whom the notice is addressed; or (ii) on the date received as indicated on the return receipt when sent by pre-paid certified or registered mail, return receipt requested, to the party to be notified at its address so follows:

IF To APLC: APLC, INC.

171 Palmer Street  
Belford, New Jersey  
Attention: Corporate Secretary

If To MRPC:

Manchester Renewable Power Corporation  
29261 Wall Street  
Wixom, Michigan  
Attention: Scott D. Salisbury

Either party may change such representative or address by written notice of such change of representative or address given to the other party.

26. General Provisions.

A. Severability. If any term hereof shall be deemed to be null and void, invalid, illegal or unenforceable, such provision shall be deemed amended to conform to applicable laws so as to be valid and enforceable, but if it cannot be so amended, the remainder of this Agreement shall continue in full force and effect, with such void or unenforceable term deleted therefrom.

B. Binding Effect. The covenants, terms, conditions, provisions and undertakings in this Lease or in any renewals hereof shall extend to and be binding upon the heirs, executors, personal representatives, administrators, successors and assigns of the respective parties hereto as if they were in every case named and expressed.

C. Governing Law. This Lease shall be interpreted and shall in all respects be governed in accordance with the laws of the State of New Jersey.

D. Entire Agreement. This Lease contains the entire agreement as to the matters contained herein between the parties. No subsequent agreements, contracts, promises or representations shall be binding and effective between the parties, unless set forth in writing and signed by the parties.

E. Further Assurances. APLC and MRPC each hereby agree to use reasonable efforts to provide each other with such additional instruments, documents or other further assurances as the other may reasonably request in furtherance of the development, financing, construction, or operation of the Facility, or the performance of any duty and obligation arising hereunder; provided, however, that nothing herein shall obligate either APLC or MRPC to assume any greater liabilities or obligations than are otherwise provided herein.

F. Additional Certificates. In addition to the agreements and notices to be delivered as herein provided, each of the parties hereto shall, from time to time upon the reasonable request of the other party, execute and deliver such additional certificates, notices or instruments (including a Memorandum of Lease or similar document to be recorded in the public land records) and shall take such other actions as may reasonably be required to carry out the terms of this Lease more effectively.

G. Corporate. All corporate entities signing this Lease represent and warrant that their execution, delivery and performance of this Lease has been duly authorized by all necessary corporate action, and is valid and binding upon such corporations.

IN WITNESS WHEREOF, this Lease has been executed as of the day and year written above.

IN THE PRESENCE OF:

\_\_\_\_\_

\_\_\_\_\_

APLC., INC., a New Jersey corporation

BY: 

Its: President and  
A duly authorized representative  
of APLC

MANCHESTER RENEWABLE POWER  
CORPORATION, a New Jersey corporation

Scott Hawthier

BY:   
SCOTT SALISBURY

Its: PRESIDENT

duly authorized representative of

and

MRPC

32260

~~EXHIBIT~~ A

**MANCHESTER METHANE POWER PROJECT  
PARCEL DESCRIPTION**

All that certain piece, parcel or tract of land, situate, lying, and being located in Manchester Township, Ocean County, New Jersey, said parcel being a portion of Block 2 Lot 6 now or formerly of Ocean County Landfill Corporation and being further described as follows:

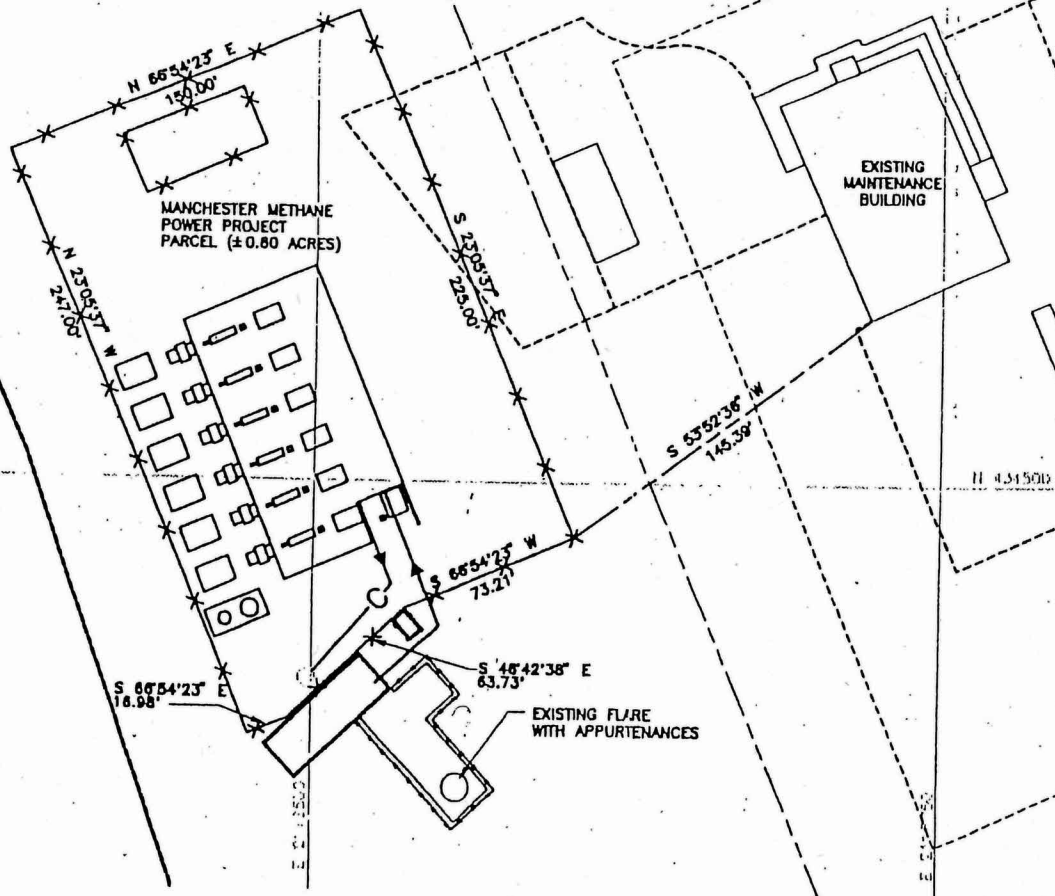
Beginning at a point, said point being the Southwest Corner of the Existing Maintenance Building at the Ocean County Landfill Corporation and running S 53° 52' 36" W 145.39 feet to the Point of Beginning; thence, S 66° 54' 23" W 73.21 feet; thence, S 46° 42' 38" W 63.73 feet; thence, S 66° 54' 23" W 16.98 feet; thence, N 23° 05' 37" W 247.00 feet; thence N 66° 54' 23" E 150.00 feet; thence, S 23° 05' 37" E 225.00 feet to the point or place of beginning.

Containing 0.80 acres of land more or less.

EXIST 1 A



0 50 100  
 SCALE IN FEET



DATE 7/7/95  
 DWN DBT  
 APP RAP  
 REV

OCEAN COUNTY LANDFILL CORP.  
 MANCHESTER METHANE POWER PROJECT  
 MANCHESTER COUNTY, OCEAN COUNTY, NJ

PARCEL

FIGURE  
 1  
 PROJECT NO.  
 82129.0LG.000



DE-110002/8781: FA 0000/02129-16  
 Basic 1 = 400,000. Date: 7/3/85 .  
 -01 day  
 Kralic INT2055H, MAC007801  
 Operator: DITEZ



OCEAN COUNTY LANDFILL CORP.  
INTEGRATED SOLID WASTE MANAGEMENT FACILITY  
MANCHESTER COUNTY, OCEAN COUNTY, NJ  
LANDFILL FACILITY  
PROPOSED INTERNAL POWER LINE ROUTE

**FIGURE**  
**1**  
**PROJECT N**  
**B2129.OLG.OI**